

SERVED: November 7, 2001

NTSB Order No. EA-4923

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 30th day of October, 2001

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15775
v.)	
)	
FRANK DANIEL VILLEGAS,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent has appealed from the written decision Administrative Law Judge Patrick G. Geraghty served in this proceeding on March 2, 2000.¹ By that decision, the law judge granted summary judgment for the Administrator on a complaint that suspended the powerplant rating of respondent's mechanic certificate for 30 days for his alleged violation of section 43.13(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 43). For the reasons discussed below, the appeal will be denied.

¹A copy of the law judge's "Decisional Order" is attached.

The Administrator's order of suspension, the complaint herein, alleged, in relevant part, as follows:

1. You are now, and at all times mentioned herein were, the holder of Mechanic Certificate No. 521151356, with airframe and powerplant ratings.
2. On or about February 27, 1999, you performed maintenance on a Boeing Model 757-222 aircraft, civil registration number N560UA operated by United Airlines, in that you performed an Engine Windmilling Inspection on the number 2 engine.
3. The flight crew had previously reported that the number 2 engine had windmilled for 20 minutes after an in-flight shutdown.
4. The applicable maintenance manual for proper performance of an engine windmilling inspection requires removal of the engine for inspection of all bearing compartments if the engine has turned freely or operated without oil.
5. You performed said windmilling inspection improperly in that you did not remove the engine and inspect it as required.

The Administrator's motion for summary judgment sought, in effect, a ruling that, based on respondent's answer to the complaint and information developed in discovery, affirmation of the suspension order was warranted because there was no genuine dispute between the parties on any material factual issue. Specifically, respondent in his answer had admitted the first three allegations, and his admissions or statements in other contexts established that there was no contest over whether the Administrator had referenced the correct manual or was in error in asserting that the engine had not been removed for inspection. The motion, therefore, concluded that there were no triable questions of fact requiring a hearing. The respondent filed no reply to the motion.

On appeal, respondent, without explaining why he did not oppose the Administrator's motion for summary judgment during the period provided by our rules,² urges us to accept his extensive, belated views as to why the engine did not need to be removed to be inspected in accordance with the manual.³ We decline the invitation to do so.

The law judge acted fully within his authority in ruling on the motion and his analysis reveals a conscientious understanding of the record as constituted when the request for summary judgment was made. If respondent wanted to litigate at a hearing any of the facts on which the Administrator's allegations were predicated, he was obligated, by virtue of the motion for summary judgment, to come forward and identify them. Because he did not, the only issue before us on this appeal is whether the law judge erred, as a matter of law, in granting the Administrator's motion. We perceive no basis in respondent's brief for so concluding.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied;
2. The decision of the law judge is affirmed; and

²Respondent's suggestion that he did not file a response to the motion because our rules state that "any party *may* file an answer in support of or in opposition to a motion..." is frivolous. See Section 821.14, 49 C.F.R. Part 821. That our rules do not *require* a party to answer a motion can not reasonably be read to suggest that a law judge is not authorized to dispose of a motion a party has chosen, at his potential peril, to ignore.

³The Administrator's motion to strike various exhibits and documents attached to or referenced in respondent's appeal brief, as well as argumentation based on them, that were not part of the record before the law judge is granted.

3. The 30-day suspension of respondent's mechanic certificate shall begin 30 days after the service date indicated on this opinion and order.⁴

CARMODY, Vice Chairman, and HAMMERSCHMIDT and BLACK, Members of the Board, concurred in the above opinion and order. BLAKEY, Chairman, and GOGLIA, Member, did not participate.

⁴For purposes of this order, respondent must physically surrender his mechanic certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).